



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Mrs. B. B. Sapp, Executive Secretary
Teacher Retirement System of Texas
Austin, Texas

Dear Mrs. Sapp:

Opinion Number 0-5455

Re: Can the profit from the par value of bonds sold by the Teacher Retirement System be construed to be income within the provisions of Subsection 5, Section 8, of the Teacher Retirement Law?

We are in receipt of your request for an opinion on the questions stated in your letter reading as follows:

"The Teacher Retirement System of the State of Texas recently sold approximately \$447,000.00 par value bonds from the Teacher Savings Fund and received from that sale approximately \$16,000.00 in excess of the book value of the bonds at the date of sale. This \$16,000.00 therefore represents a profit to the Teacher Savings Fund, and your opinion is respectfully requested as to whether or not this profit can be construed to be income within the provisions of Sub Section 5 of Section 8 of the Teacher Retirement Law.

"If this profit can be so construed as income within the provisions of the Article above referred to, can the profit then be distributed to the various individual teachers' accounts in accordance with the provisions of Section 8, Sub Section 1 D of the Teacher Retirement Law?

"If the above referred to profit can not be so construed, your opinion is further requested as to what disposition the System should make of the profit."

Replying to your questions we quote Subsection 5 of Section 8 of the Teacher Retirement Law, as amended by H. B. No. 602, 48th Legislature, which reads as follows:

"The Interest Fund is hereby created to facilitate the crediting of interest to the various other funds. All income, interest and dividends derived from the deposits and investments authorized by this Act shall be paid into the Interest Fund. Once each year on August 31, interest shall be allowed and transferred to the other funds, respectively. The State Board of Trustees shall annually transfer to the credit of the interest reserve account of the Permanent Retirement Fund all excess earnings after interest-bearing funds and the Expense Fund have been duly credited with interest for the year in the manner provided in this Act."

Section 8, Subsection 1(d) of the same law is brought forward in H. B. No. 602 as Section 8, Subsection 1(e) and reads as follows:

"Current interest on members' contributions shall be credited annually as of August 31st and shall be allowed on the amount of the accumulated contributions standing to the credit of the member at the beginning of the year and shall not be allowed for parts of a year. Following the termination of membership in the Retirement System for those members who have been absent from service for five (5) years in any period of six (6) consecutive

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years, the Teacher Saving Fund account of such members shall be closed and warrants covering the total accumulated contributions sent to them upon the filing of formal application. Until the time of payment of such accumulated contributions, said teacher shall receive no interest on the amount due him under this subsection, and the amount shall be held in a non-interest-bearing account to be set up for such purpose."

Construing the foregoing quotations from the Teacher Retirement Law it is our opinion that the profit derived from the sale of the bonds is income and that it should be paid into the Interest Fund in accordance with the provisions of Section 8, Subsection 5 of the above mentioned law, and distributed as provided in Subsection 1(o) of Section 8, of the amended Act.

We enclose herewith a copy of Opinion Number O-823, the last paragraph of which opinion construes "other revenue" as meaning any revenue earned by the permanent school fund of a county as a result of the investment of the proceeds of the sale of land belonging to such fund.

We think it is clear that profit derived from investments authorized by the law constitutes "income" and should be paid into the Interest Fund.

Very truly yours

ATTORNEY GENERAL OF TEXAS

BY

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APPROVED JUL 28, 1943

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